

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-669 of 2023
Date of Decision:- 12.04.2023

Rajesh Kalra

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Sanpreet Sandhu, Advocate
for the petitioner.

Mr. N.K Sheoran, DAG, Haryana.

KARAMJIT SINGH, J.(Oral)

The petitioner is seeking default bail in criminal case having FIR No.683 dated 16.08.2022 under Sections 18, 21C, 22C and 29 of NDPS Act, Police Station Sadar Yamunanagar.

The counsel for the petitioner submits that as per the prosecution version, the petitioner was apprehended and commercial quantity of medical intoxicants were recovered from his possession on 16.08.2022 by the police and was produced before the Area Magistrate and the challan was presented against the petitioner on 9.2.2023. The counsel further submits that the said challan was filed

without the FSL report and therefore, is to be considered as incomplete challan. The counsel for the petitioner further submits that no application was moved by the public prosecutor or additional public prosecutor, as per the provisions of Section 36A(4) NDPS Act seeking extension of time to complete the investigation in the present case. It is further submitted that in the instant case no report was ever furnished by the Public Prosecutor in terms of the aforesaid statutory provision. The counsel for the petitioner further submitted that the petitioner's right to default bail accrued on completion of statutory period of 180 days as per the provisions of Section 36 of NDPS Act. Even on the expiry of the said statutory period, the report of FSL was not filed, so the challan filed by the prosecution on 9.2.2023 is to be considered as incomplete challan.

In support of his contentions the counsel for the petitioner referred to order dated 09.08.2021 passed by the Coordinate Bench of this Court in *CRR No.361 of 2021, Jagvinder Singh Vs. State of Haryana*, wherein it was held that the report of FSL with regard to nature of recovered substance would go to the root of the matter and a challan filed without the FSL report with regard to the same would be an incomplete challan and would not satisfy the requirement envisaged under Section 167(2) Cr.P.C. and the accused in such circumstances would be entitled to be released on default bail. The counsel further relied upon the decision of the

coordinate Bench of this Court in *CRR-40-2022 Ajaib Singh Vs. State of Haryana*, decided on 17.02.2022.

The counsel for the State on the other hand contends that there is no illegality in the impugned order. The State counsel further submits that the challan was filed on 09.02.2023 but the prosecution has failed to file the report of FSL till the completion of statutory period of 180 days and resultantly the petitioner filed bail application under Section 167(2) Cr.PC but the same was rightly dismissed by the trial Court. The State counsel further contends that admittedly the challan was filed without the report of FSL but it cannot be termed as an incomplete challan. In support of his contentions the State counsel referred to CRR No.1731 of 2019, Akash Kumar @ Sunny Vs State of Haryana decided on 16.10.2019 by the coordinate Bench of this Court.

I have considered the submissions made by the counsel for the parties.

As per prosecution, the present case is with regard to recovery of commercial quantity of contraband and the petitioner was sent to custody on 17.08.2022. The police presented challan against the petitioner on 09.02.2023 without FSL report. Admittedly in the present case report of FSL was not filed within the statutory period of 180 days. In the meantime, petitioner filed an application for grant of default bail on 22.02.2023. It appears that no application or report

was filed by the Public Prosecutor as per the requirement of Section 36A(4) of NDPS Act within prescribed statutory period of 180 days.

As per the reply dated 6.4.2023 filed by the State by way of affidavit of Kawaljit Singh, Deputy Supdt. Of Police, Yamunanagar, it appears that even by that date the report of FSL was still awaited.

The report of the FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the coordinate Bench of this Court in *Jagvinder Singh case (supra)* and *Ajaib Singh's case (supra)*. The similar view has been taken by the coordinate Bench of this Court in Criminal Revision No.1314 of 2021, *Joginder Singh Vs. State of Haryana*, decided on 11.02.2022. Even the Hon'ble Apex Court in *SLP (Criminal) No.8164-8166/2021 Mohammad Arbaz and others Vs. State of NCT and Delhi*, also granted relief to the accused, under the similar circumstances.

Thus, the order dated 1.03.2023 passed by the trial Court is not sustainable in the eyes of law.

In the light of the above, the impugned order dated 01.03.2023 rejecting default bail to the petitioner is hereby set aside and he is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge (Duty).

The present petition stands disposed of accordingly, so
also the pending miscellaneous application(s), if any.

12.04.2023
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No